IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1063/2006

Reserved on: 20.11.2007

Decided on.29.11.2007

State of H.P. others. **…Petitioners**

Versus

Prem Kumar & others. **…Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*. No.*

For the petitioner : Ms. Meenakshi Sharma, Deputy Advocate General.

For the respondents: Mr. M.L. Sharma, Advocate.

Rajiv Sharma, J. (oral)

A challenge has been laid by way of this petition to the award passed by the Labour Court-cum-Industrial Tribunal, Shimla dated 13.3.2006 in reference No. 199 of 2003.

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the Labour Court-cum-Industrial Tribunal, Shimla:

> **"Whether the termination of services of Shri Om Parkash son of Sh. Brahm Dutt and Shri Prem Kumar son of Sh. Goria Ram, daily wages beldars by the Conservator of Forests (Wild life), Range Khalini, Shimla-2, w.e.f. 11.2.2000 without complying with the section 25-F and 25-N of the Industrial Disputes act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the aggrieved workmen are entitled to?"**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

In sequel to the reference made by the State Government, the respondents (herein-after referred to as the workman for convenience sake) filed their statement of claim before the Labour Court primarily contending therein that they have been retrenched on 11.2.2000 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act for brevity sake). The employer did not choose to file any reply to the statement of claim. In fact, the State was proceeded exparte on 1.12.2003.

The learned Deputy Advocate General had strenuously argued that the award dated 13.3.2006 is not sustainable in the eyes of law.

Mr. M.L. Sharma, Advocate appearing on behalf of the workmen had supported the award dated 13.3.2006.

I have heard the learned counsel for the parties and perused the record.

Respondent No.1 (workman) was engaged on daily wages basis in the year 1994 and respondent No.2 (workman) was engaged on daily wages basis in the year 1995. The workmen were retrenched on 11th February, 2000. Feeling aggrieved by their retrenchment, they approached the learned H.P. State Administrative Tribunal by way of OA No. 1538/2000. The OA No. 1538/2000 was directed to be treated as a representation by the Principal Chief Conservator of Forest, H.P. on 8th September, 2000. The same was rejected by the Principal Chief Conservator of Forest, H.P. on 10th November, 2000. The workmen thereafter preferred OA No. 4043/2000 before the learned H.P. State Administrative Tribunal. The OA was returned to the workmen on 27.3.2002 to present the same before the appropriate forum. Consequently the workmen had taken recourse to the machinery provided

under the Industrial Disputes act and thereafter the matter was referred to the H.P. Labour Court by way of a reference.

Shri Om Parkash (respondent No.2-workman) had appeared as PW-1 before the Labour Court. He had testified before the Labour Court that he was engaged in the month of July, 1995 and had worked continuously up to 11th February, 2000 and had completed 240 days in a block of 12 months in a year preceding his retrenchment. He had further testified that no notice or retrenchment compensation was paid to him and persons junior to him, namely, Ishwar, Duni Chandi, Jai Kishan, Man Bahadur and Surya Parkash were retained by the employer while retrenching them on 11th February, 2000. Shri Prem Kumar (respondent No.1-workman) had appeared as PW-2. He had testified that he was engaged in the month of January, 1994 and had completed 240 days in a block of 12 months in a year preceding his retrenchment and the persons junior to him were retained by the employer at the time of effecting his retrenchment i.e. 11.2.2000.

The employer i.e. State was proceeded exparte on 1.12.2003. An application was filed for setting aside the exparte order on 28.4.2004. The same was dismissed for default on 2.8.2004 by the learned H.P. Labour Court, Shimla.

It is evident from the man-days chart placed on record by the petitioners with the petition that both the workman had completed more than 240 days preceding their retrenchment and were entitled to the protection of section 25-F of the Industrial Disputes Act, 1947. The workmen were entitled to notice and in lieu thereof they were entitled to get compensation as per law. Admittedly neither any notice nor any compensation has been paid to the workman as correctly held by the Labour Court, Shimla. The persons junior to the workmen, namely,

Ishwar, Duni Chand, Jai Kishan, Man Bahadur and Surya Parkash were retained at the time of the retrenchment of the workmen on 11th February, 2000, violating section 25-G of the Industrial Disputes Act, 1947.

The learned Deputy Advocate General has vehemently argued that the employer/petitioners could not be proceeded exparte by the H.P. Labour Court, Shimla, more particularly, when the representatives were attending the proceedings. This plea is not tenable on the basis of the material placed on record by the workmen, more particularly; the order dated 2nd August, 2004 passed by the Labour Court, Shimla (annexed with the reply as Annexure R-2). Even on 2.8.2004, the case was called twice but none had appeared on behalf of the employer. The application for restoration was dismissed in default for want of prosecution on 2nd August, 2004. The Labour Court after appreciating the facts and taking into consideration the mandatory provisions of the Industrial Disputes Act, 1947 had answered the reference in favour of the workmen directing their reinstatement as well as holding them entitle to 25% back wages. The award passed by the Labour Court is in conformity with law. There is neither any illegality nor any procedural irregularity in the award dated 13.3.2006 passed by the Labour Court, Shimla.

Accordingly there is no merit in the writ petition and the same is dismissed with no order as to costs.

(Rajiv Sharma), Judge

November 29, 2007
Awasthi